THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 25 of 2004
Old F.A.F.O. No. 480 of 1983

State of U.P. through Deputy Director of Animal Husbandry, Owner of Jeep No. UTD-3120.

… **Appellant.**

Versus

1. Rajendra Singh Bhandari, S/O Sri Kunwar Singh Bhandari R/O Tapoban (Sarain) Shiva Nand Nagar, Tehsil Deoprayag District Tehri Garhwal. (Claimant)
2. Bharat Singh, Driver Jeep Vehicle No. U.T.D.-3120 C/O Deputy Director, Animal Husbandry, Garhwal.

… **Respondents.**

Sri Nand Prasad, learned Standing Counsel for the appellants.
Sri H.S. Rawal holding brief of Sri V.B.S. Negi, learned counsel for respondents.

Date May 03, 2006.

(Hon'ble B.S. Verma, J.)

This appeal has been preferred under Section 110-D of the Motor Vehicles Act, 1939 (***for short the Act***) against the judgment and award dated 30-4-1983 passed by the Motor Accident Claims Tribunal Tehri Garhwal (***for short the Tribunal***) in M.A.C. Petition No. 8 of 1982, Rajendra Singh Vs. Bharat Singh and others, whereby the claimant has been awarded compensation of Rs. 18,000/- along with interest @ 6% per annum payable by the opposite Party Nos. 1 and 2, the owner and driver of the vehicle, from the date of petition till payment.

Relevant facts giving rise to the present appeal are that the claimant Rjaendra Singh filed claim petition for compensation of Rs. 60,000/- in respect of the injuries sustained by him in a motor vehicle accident, which occurred on 25-10-1981 involving Jeep No. UTD-3120, owned by the appellant, and driven rashly and negligently by the respondent no.2. The claimant was pillion rider

on scooter No. DEQ-2364, which was being driver by O.P. No. 3 Jagmohan Singh. At the spot, the O.P. No.3 seeing the jeep went to the extreme left side and applied brakes of the scooter to stop. The jeep dashed the back portion of the scooter with the result the claimant suffered serious injuries including fracture of his right leg. According to the claimant he spent Rs. 15,000/- on his treatment, which was still continuing. Accordingly, he claimed Rs. 60,000/- on different counts.

Both O.P.Nos. 1 and 2 filed joint written statement and contested the case. The allegations made in the claim petition were denied. It was asserted that no accident took place with the Jeep at the alleged place. It was contended that the scooterist was going at high speed and did not blow horn while negotiating the curve. Due to the negligence of scooterist, the scooter went off the road and fell into a Khud. On seeing the accident, the Deputy Director, who was going by the said jeep asked the driver to stop. On the request of the injured persons, they were carried by the said jeep to the hospital at Rishikesh. According to the O.Ps., no collision took place between the jeep and the scooter.

The O.P. No.3 Jagmohan Singh, the scooterist, filed his written statement and supported the case of the claimant. He further stated that he was not responsible for the motor-accident, rather the accident was the result of rashness and negligence on the part of jeep driver.

The learned Tribunal framed necessary issues in the case and after recording the evidence led by the rival parties, it was held that the accident took place due to rash and negligent driving of the jeep by its driver. It was further held that the petition was not bad for mis-joinder of driver of the jeep, being a government servant. Ultimately, the learned Tribunal after scrutinizing the evidence on record found the claimant entitled to Rs. 8,000/- towards medical expenses including transport charges etc. and Rs. 10,000/- towards

physical and mental agony. Accordingly the claim petition was decreed for compensation of Rs. 18,000/- as mentioned earlier.

In this appeal, the impugned judgment and award has been assailed mainly on the ground that the finding on the point of negligence is not based on record. Quantum of compensation has also been challenged.

I have heard learned counsel for the parties and perused the evidence on record including the impugned order.

In order to prove the negligence on the part of the jeep driver, the claimant has produced P.W.4 Shiv Singh, who had given ocular account of the accident and the manner in which the accident in question occurred beside examining himself on the point. PW 4 has stated on oath that on the relevant date, he was going on his cycle. He saw the scooterist, who overtook him. Then he saw a jeep coming at a high speed and dashing against the scooter with the result the claimant, who was pillion rider was thrown out and sustained injuries. From the side of the opposite parties, Bharat Singh the driver of the jeep, D.W.1, as well as Sri S.C. Joshi, the Deputy Director, D.W.2, who was sitting in the jeep were examined. The learned Tribunal has discussed the entire evidence led by the opposite parties and found that the statements of the driver of the jeep and D.W.2 S.C. Joshi were conflicting and were not in conformity with the stand taken in the written statement. D.W.2 S.C. Joshi went on saying that the scooter was coming from the opposite direction and one person was sitting as pillion rider. When the jeep cross the scooter, he heard a sound like ***"Khatak"*** and he asked the driver to stop the jeep. From the statement of the D.W.1 it comes out that the jeep was right hand driver and naturally the Deputy Director must have been sitting on the left side. The ***Khud*** was on the right hand side of the driver, therefore, D.W.2 could not have been in a position to have seen anything falling from the road. Statement of D.W.2 further shows that at first he could not say that

he saw the scooterist. The hearing of sound like ***Khatak*** by D.W.1 and D.W.2 in their statements is indicative of the fact that the jeep collided against the scooter, otherwise there was question of hearing such a sound in normal course. Moreover, it may be mentioned that both D.W.1 and D.W.2 are the interested witness of the case. Considering the evidence of the witnesses produced by the opposite parties, namely D.W.1 and D.W.2, as compared to the statement of independent eye-witness P.W.4 Shiv Singh, the claimant's version that the accident occurred due to the negligence on the part of the driver of the jeep appears to be more reliable. The learned Tribunal has discussed each and every aspect of the case in the impugned order. I do not see any infirmity in the finding recorded by the Tribunal on the issue of negligence.

So far as quantum of compensation is concerned, in the claim petition the claimant has claimed compensation worth Rs. 60,000/- out of which Rs. 15,000/- were claimed towards medical expenses. He was admitted in the hospital from 25.10.1981 to 25.11.1981. He was again hospitalized from 16.1.1982 to 5.2.82. The learned Tribunal after taking into consideration the material on record found favour with the claimant to the extent that he must have spent Rs. 8,000/- towards medical expenses. In addition, the Tribunal found the claimant entitled to sum of Rs. 10,000/- towards mental and physical suffering. The claim of the claimant towards other heads was turned down. Dr. R.P. Singh, P.W.5, has stated that the claimant suffered permanent disability of 20%, for which he had issued a certificate, Ext. 54. Taking into consideration the facts and circumstances of the case especially the nature of injuries, the period of hospitalization and the treatment which the claimant had undergone coupled with the statement of doctor examined by the claimant, this amount of Rs. 18,000/- as compensation appears to be just and fair. By no stretch of imagination, it can be said that the quantum of compensation is excessive.

Having gone through the entire material on record, I find no ground to interfere with the findings recorded by the learned Tribunal. No infirmity or illegality has been committed by the Tribunal in holding that the driver of the jeep was alone responsible for the accident in question resulting into grievous injuries to the claimant. The award of compensation of Rs. 18,000/- along with interest @ 6% per annum is just and fair.

No other point was urged or argued before me.

In the result, the appeal lacks merit and is liable to be dismissed.

The appeal is hereby dismissed. The judgment and award under appeal is upheld. No order as to costs.

(B.S.Verma, J.)

RCP